



Main Office

10060 Goethe Road

Sacramento, CA 95827-3553

Tele: [916] 876-6000

Fax: [916] 876-6160

Sacramento Regional Wastewater

Treatment Plant

8521 Laguna Station Road

Elk Grove, CA 95758-9550

Tele: [916] 875-9000

Fax: [916] 875-9068

Board of Directors

Representing:

County of Sacramento

County of Yolo

City of Citrus Heights

City of Elk Grove

City of Folsom

City of Rancho Cordova

City of Sacramento

City of West Sacramento

Mary K. Snyder
District Engineer

Stan R. Dean
Director of Policy and Planning

Prabhakar Somavarapu
Director of Operations

Marcia Maurer
Chief Financial Officer

Claudia Goss
Director of Communications

July 19, 2010

Delta Stewardship Council
Terry Macaulay
Deputy Executive Officer, Strategic Planning
650 Capitol Mall
Sacramento, CA 95814

Via e-mail interimplan@deltacouncil.ca.gov.

Subject: Second Draft Interim Plan, Prepared for Consideration by the Delta Stewardship Council, California Water Code Section 85084, July 14, 2010

Attention Ms. Macaulay:

The Sacramento Regional County Sanitation District (SRCSD) appreciates the opportunity to provide comments on the July 14, 2010 "Second Draft Interim Plan" (Interim Plan). SRCSD supports efforts and research to find solutions to address the myriad of conditions confronting the Delta and its long-term sustainability. We understand the important task the Delta Stewardship Council (Council) has before it to develop an Interim Plan in such a short timeframe.

SRCSD generally supports the elements of the Second Draft related to early actions and how the Council will develop recommendations for early actions. Ultimately, we believe, the Interim Plan reflects a pragmatic approach on this issue. We are providing the following general and specific comments on some of the details and potential ambiguities in the Second Draft, but overall believe the Second Draft approaches early actions from an appropriate perspective.

General Comments

SRCSD believes the Second Draft is not sufficiently clear as to how the Interim Plan will "inform council responsibilities and recommendations." Ultimately, we believe the Interim Plan should focus on early actions. As a related matter, SRCSD understands the general objective of providing "linkage" to the Delta Plan, but we suggest that because the Delta Plan will not exist for some time, that the appropriate consideration of the Delta Plan is to ensure that the Interim Plan not preclude or interfere with alternatives that may emerge in the Delta Plan. There are aspects of the Second Draft that suggest prejudgment of the Delta Plan and premature exercise of authorities that are relevant only to the Delta Plan. We provide specific recommendations related to this issue below but emphasize here that the Council should defer action on its proposed consistency regulations (recognizing those regulations are a separate agenda item) and Appendix V is unnecessary and confusing in purpose and due this and its problematic contents should simply be deleted.

SRCSD strongly supports the theme of the Second Draft related to outreach and building effective relationships. SRCSD is eager to engage with the

Council and staff going forward, and encourages that this theme be maintained.

However, we must point out that the current process for Interim Plan development makes it extremely difficult to provide considered input, and causes concern as to how comments are considered. The Second Draft became available the evening of Thursday, July 15, 2010 with the instruction that comment be provided by the following Monday in order for Council members to receive the comments. We believe it is important for the Council to have and consider public comments as it reviews the Second Draft, but it proves exceedingly difficult to review and provide comments in such a short period.

It is more challenging still to try to ascertain what changes were made from the First Draft. We have the following recommendations for the next draft. First, we urge that the Third Draft be provided much further in advance of the Council meeting at which it will be considered. Secondly, we ask that the Third Draft show changes from the Second Draft, or that a companion document be made available so that interested parties (and the Council) can readily determine what changes have been made. Third, there should be adequate time for public comment and for the members of the Council to have received and considered the comments before the Third Draft is presented at a Council meeting. We understand that the Council needs to complete an Interim Plan. However, if it proves necessary to delay action on the Interim Plan by some period in order to ensure adequate consideration of public comment and the best possible product, the Council should be open to that option in the interests of transparency and good decision making.

Specific Comments

SRCS D requests consideration of the specific comments below on the uses of the Interim Plan as a framework for early actions, to inform Council responsibilities and recommendations, and explaining linkage to the Delta Plan. We also are providing specific comments on Section I: Analytical Tools for Council Action under the Sacramento-San Joaquin Delta Reform Act of 2009, Finance Plan and Appendix V: Strategies and Actions from the Delta Vision Strategic Plan and Other Sources (Illustrative Only).

The comments are organized first in relationship to the identified “uses” of the Interim Plan and second to address the finance plan, Section IV, and Appendix V.

Framework for Early Actions

The first use identified in the Second Draft is to provide a process for developing recommendations for early actions. As we understand, the concept is to allow the Interim Plan to be updated and evolve up until the time the Delta Plan is adopted. Considering the deadline for the Delta Plan and other responsibilities of the Council, the limited legislative authority and direction for the Interim Plan, and the fact that early actions may yet come to the Council’s attention, this approach appears to make sense. We appreciate that the Second Draft recognizes (p.12) the substantial distinctions between the Interim Plan and the Delta Plan. However, text on page 25 of the Second Draft is suggestive of a consultation process during the interim period that would be relevant to “recommendations” analogous to the consistency determinations for the Delta Plan. We believe this should be clarified further and, again, that the Interim Plan itself should focus on recommended early actions.

Page 22 of the Second Draft identifies a “Decision Process.” It is not clear whether this applies to recommendations on early actions, identification of items for the Delta Plan “recommendations,” or some combination of these. Also, with respect to the consideration of “conceptual” proposals, we encourage greater flexibility. At a practical level, the proponent of a “project in concept” may not wish (or may be ill-advised) to proceed with the effort and cost of further development in the absence of some “reading” from the Council. We believe the Council can reserve to itself to determine how to proceed on a case-by-case basis.

Inform Council Responsibilities and Recommendations

The Second Draft identifies a use of the Interim Plan as being to “inform Council advice to – or review the recommendations of – other agencies”. Although it may be a function of the limited time in which these comments were prepared, we have not identified specifically how the Interim Plan proposed by the Second Draft would fulfill this purpose. We acknowledge the discussion of legal authorities that relate to the Delta Plan and the Council itself, but believe those to be self-explanatory. We recommend clarification on this issue.

Linkage to the Delta Plan

The Second Draft describes the third use of the Interim Plan as being to provide linkage to the Delta Plan. In the abstract, this is not objectionable. However, given that the Delta Plan will not exist until 2012, and considering other components of the Second Draft, we have concerns as to what is intended. We are particularly concerned that the “linkage” not prejudge the Delta Plan or suggest an “Interim Plan” effectively exists.

The Second Draft, initially on this issue, states that “the first requirement for smooth transition is consistency in use of legal authority provided in the Act.” While SRCSD agrees that legal consistency is important, the legal authorities related to the Interim Plan and the Delta Plan are not identical. As we have commented previously, SRCSD does not believe that policy objectives expressed in legislation are themselves a source of legal *authority*. We also do not perceive there is significant risk of a “non-smooth” transition that is avoided in the Second Draft. One objective that the Interim Plan could state is that early actions not preclude known, potential actions consistent with the Delta Plan. However, we do not believe that the Interim Plan needs to go beyond that.

We submit that another area where the Second Draft exceeds the proper scope of an Interim Plan is in its proposed incorporation into Appendix 1 of the Administrative Procedures Governing Appeals. Those procedures are unrelated to the legislative charge to develop an Interim Plan. Their inclusion in the Interim Plan will create confusion.

SRCSD has an additional concern related to inconsistency of the proposed adoption of the Administrative Procedures Governing Appeals and the Second Draft. We recognize that the administrative procedures are a separate agenda item for the Council’s meeting on July 22-23, 2010. However, the plan to adopt those procedures is premature and would be inconsistent with the Second Draft’s emphasis on building strong relationships with stakeholders. The proposed Administrative Procedures would have significant ramifications for local public agencies. In fact, as SRCSD stated in comments dated June 23, 2010, we believe the proposed procedures go beyond the Council’s authority in controlling the actions of local agencies. We believe that few of such agencies are aware of the proposals under consideration or what they would mean. In the meantime, there is a great deal of time remaining before the procedures are even needed. An important step in building of

relationships, confidence, and trust would be to reach out to potentially affected local governments and create a working group. This working group would suggest improvements and isolate any areas of disagreement along with the positions of affected parties, in order that the Council can make a fully informed decision.

Section IV-Finance Plan

SRCSO agrees completely with the statement regarding the necessity of a stable financing structure for being able to achieve the coequal goals (page 7). We appreciate that the Second Draft responds to previous comments related to financing. The three scenarios being developed to initiate analysis of financing options are a good start, but alternative number three is unclear (page 39). This alternative appears to include the concept of beneficiary pays, but "Such funding may be based on stressors on the ecosystem, water supply, and other facilities..." is unclear. Invasive species are a stressor on the ecosystem. How would funding be based on this stressor? Who would it be assigned to? Trying to determine funding based on stressors to the ecosystem will be very difficult. Therefore, this sentence should be deleted and leave alternative number three with the concept that enhanced funding will come from users, specifically those who benefit.

Appendix V

SRCSO believes that Appendix V of the Second Draft should be omitted. The title to this appendix is followed by "(Illustrative Only)". This begs the question, what is the purpose of Appendix V, in an Interim Plan or otherwise? The introductory paragraph of Appendix V describes obligations to prepare a Delta Plan, and suggests the items listed may be considered for the Delta Plan. But the next following paragraph states that the list is neither approved by the Council nor an indication that items on the list will ultimately be included in the Delta Plan. (Many of the items on the list are very "conceptual".) Again, one is left to wonder what the Appendix is for, or how it relates to the Interim Plan. The Appendix is unnecessary and creates confusion. SRCSO has previously commented on specific items stated in Appendix V, included in our comments on the First Draft. Those comments remain applicable, but the Appendix should simply be deleted.

SRCSO recognized the challenges facing the Council and the need for timely action in developing an Interim Plan. We also appreciate the considerable staff effort that brings many relevant considerations into one place in the first draft of the Interim Plan. However, we believe that the Interim Plan should be more focused on near term actions and that such an approach is far more likely to lead to progress.

Thank you for considering SRCSO's comments. We look forward to working with the Council in the future. If the Council staff has any questions about these comments please contact me at 916-875-9101, deans@sacsewer.com, or Terrie Mitchell, 916-876-6092. mitchellt@sacsewer.com.

Sincerely,



Stan Dean
District Engineer

cc: Terrie Mitchell, Legislative and Regulatory Affairs Manager
Prabhakar Somavarapu, Director of Policy and Planning